

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Robert Lonnell Smith, Jr.,

Plaintiff

v.

Washoe County et al.,

Defendants

Case No. 2:23-cv-01183-CDS-DJA

**Order Dismissing Plaintiff's Amended
Complaint and Denying as Moot
Defendants' Motion to Dismiss**

[ECF Nos. 44, 47]

Pro se plaintiff prisoner Robert Lonnell Smith, Jr., brings claims against defendants Washoe County, Washoe County Sherriff Darin Balaam, Peter Sewll, Kester Andrew Barrett-Venn, Darrin Rice, and Devonte German (collectively, defendants) under 42 U.S.C. § 1983 alleging violations of the Fourteenth Amendment based on conditions of confinement. Am. compl., ECF No. 44. Smith's claims stem from his incarceration as a pretrial detainee at the Washoe County Detention Facility. *Id.* Defendants move to dismiss. Mot. to dismiss, ECF No. 47. The motion is fully briefed. *See* Opp'n, ECF No. 61; Reply, ECF No. 62.

Defendants argue that Smith's claims are barred by claim and issue preclusion. *See generally* ECF No. 47. However, I am unable to reach the merits of the motion. Smith's amended complaint contains several references to an attached "declaration" of facts. *See* ECF No. 44 at 5, 10, 13. But a review of the amended complaint demonstrates that there is no "declaration" of facts attached to or otherwise in the motion. Therefore, there are no facts provided in the motion to allow me to determine if in fact Smith's claims are precluded. Although Smith includes the "declaration" of facts in his original complaint, I am unable to reference it because an amended complaint replaces the original complaint and the content of the original complaint is irrelevant. *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir. 1989). Given that his original complaint included this "declaration" of facts, I am inclined to believe that Smith's

1 omission of the declaration of facts in his amended complaint is a mere oversight. I thus sua
2 sponte dismiss Smith's amended complaint without prejudice and with limited leave to
3 amend—as explained in the conclusion of this order—so that he may re-file his complaint with
4 the declaration of facts. Defendants motion to dismiss is denied without prejudice as moot so it
5 may be refiled should Smith file a second amended complaint in accordance with this order.

6 **Conclusion**

7 IT IS THEREFORE ORDERED that Smith's amended complaint [ECF No. 44] is sua
8 sponte **DISMISSED** without prejudice and with leave to amend. If Smith chooses to continue
9 this litigation, he is directed to file a second amended complaint (SAC) no later than **August 15,**
10 **2025.** The SAC **may not** add additional claims or additional defendants. Should the defendants
11 seek to file a motion to dismiss they must do so **no later than two weeks** after the SAC is filed.

12 IT IS FURTHER ORDERED that defendants' motion to dismiss [ECF No. 47] is
13 **DENIED** as moot.

14 Dated: July 29, 2025

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16 Cristina D. Silva
17 United States District Judge
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